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Chairman: Mr. Wolfe ..... (Jamaica)

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The meeting was called to order at 3.15 p.m.

Agenda item 62: Social development (*continued*)

(b) Social development, including questions relating to the world social situation and to youth, ageing, disabled persons and the family (*continued*) (A/C.3/62/L.6)

Draft resolution A/C.3/62/L.6: Cooperatives in social development

1. **Ms. Ochir** (Mongolia), introducing the draft resolution on behalf of its sponsors, who had been joined by Brazil, Guatemala, Honduras, Mali, Myanmar and Panama, said that cooperatives provided a means of creating decent employment in the private sector, thereby supplementing the action of the public authorities. Through financial services, particularly in microfinance, they offered employment opportunities to marginalized social groups, such as women, who could create their own businesses and be integrated into the economy. They also enabled local producers to sell their products under fair trade conditions and to tap into niche markets. By providing training, health care and other social services, they had a positive impact on employment and on individual production capacity. It would therefore be very desirable for local, national and international decision makers to promote the establishment and development of cooperatives.

2. She pointed out that, following consultations, the draft resolution had been amended to take into account the recommendations of the Secretary-General in his report on cooperatives in social development (A/62/154). The following fourth preambular paragraph had been added: "Noting with appreciation the potential role of cooperatives development in the improvement of social and economic conditions of the indigenous peoples and rural communities". In addition, the words "and social" had been inserted between the words "business" and "enterprises" in paragraphs 2 and 3, and the phrase ", eradication of poverty" had been inserted in paragraph 2 after the words "sustainable development". Paragraph 4 (b) had been modified to read: "Encouraging and facilitating the establishment and development of cooperatives, including taking measures aimed at enabling people living in poverty or belonging to vulnerable groups, including women, youth, persons with disabilities, older persons and indigenous peoples, to fully participate, on a voluntary basis, in cooperatives, and to address their social service needs".

3. Similarly, in paragraph 4 (c), the words "to build the capacity of cooperatives" had been replaced by "and capacity-building of cooperatives", and in paragraph 4 (d), the words "and eradication of poverty" had been added after "to employment generation and to socio-economic development". Lastly, paragraph 4 (e) had been deleted, as had the words "through the Economic and Social Council" at the end of paragraph 8. She hoped that the draft resolution would be adopted by consensus.

4. **Mr. Gustafik** (Deputy Secretary of the Committee) said that the Democratic Republic of the Congo, the Dominican Republic and Malawi had joined the sponsors of the draft resolution.

Agenda item 70: Promotion and protection of human rights (*continued*) (A/62/36, A/62/369 and A/62/464)

(b) Human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms (*continued*) (A/62/183, A/62/207, A/62/212, A/62/214, A/62/218, A/62/222, A/62/225, A/62/227, A/62/254, A/62/255, A/62/265, A/62/280, A/62/286, A/62/287, A/62/288, A/62/289, A/62/293, A/62/298, A/62/304, A/62/317 and A/C.3/62/3)

(c) Human rights situation and reports of special rapporteurs and representatives (*continued*) (A/62/213, A/62/223, A/62/263, A/62/264, A/62/275, A/62/313, A/62/318, A/62/354 and A/62/498)

(e) Convention on the Rights of Persons with Disabilities (*continued*) (A/62/230)

Report of the Special Rapporteur on the situation of human rights in the Democratic People's Republic of Korea (A/62/318)

5. **Mr. Muntarbhorn** (Special Rapporteur on the situation of human rights in the Democratic People's Republic of Korea), introducing his report (A/62/264), recalled that the authorities of the country had so far declined to cooperate with him under the mandate entrusted to him by the Commission on Human Rights in 2004.

6. On the constructive side, the Democratic People's Republic of Korea was a party to four human rights treaties — the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention for the Elimination of All Forms of Discrimination against Women and the Convention on the Rights of the Child. It continued to cooperate with a number of United Nations agencies in the country and had undertaken some key law reforms, including revision of its Criminal and Criminal Procedure Codes in 2004 and 2005. A further cause of satisfaction was the conclusion, in October 2007, in the context of the six-party talks, of the Agreement on Second-Phase Actions for the Implementation of the Joint Statement. The Democratic People's Republic of Korea had thereby agreed to declare all its nuclear programmes and to disable nuclear facilities in Yongbyon by the end of the year and, in return, would receive external humanitarian assistance that could help to improve the human rights situation through bilateral talks under the six-party umbrella. The holding of the October 2007 summit between the two Koreas was also a welcome development.

7. Yet the human rights situation in the Democratic People's Republic of Korea remained grave. The country had been suffering from a severe food shortage since the 1990s, caused by natural disasters and mismanagement by the authorities, aggravated by the overemphasis on militarization and failure to generate food security due to unsustainable agricultural development. In 2006, the World Food Programme had begun its Protracted Relief and Recovery Operation to bring food aid to 1.9 million people, principally women and young children, which had, however, been slowed down by the missile and nuclear tests carried out by the country. The Government must ensure food security by itself addressing the chronic food shortage, without relying in the long term on the international emergency relief provided by United Nations agencies.

8. It had been reported that the authorities were continuing to persecute, torture or execute political dissidents and that prison conditions, in detention centres both for political dissidents and for criminals, as well as in re-education and forced labour camps, remained sub-standard. Furthermore, since the country was closed and information flow and the media were under rigid State control, there was no freedom of expression, information or association. Religious freedom was officially allowed, but was not a reality. It was also to be recalled that, since the 1970s, a number of Japanese nationals had been abducted by agents of the Democratic People's Republic of Korea, probably with the aim of using them to train spies or of usurping their identity for espionage purposes. Only five of them had returned to Japan, while the fate of the others remained uncertain, owing in particular to inadequate cooperation and follow-up on the part of the Democratic People's Republic of Korea.

9. Concerning the issue of refugees and the right to asylum, he stressed that the movements of refugees from the Democratic People's Republic of Korea had led to a boom in the trafficking in human beings and the exploitation of refugees. Moreover, practices towards refugees by first asylum countries varied: some States forcibly returned them to their countries of origin while others offered temporary refuge. In that regard, it was incumbent upon the international community to settle refugee problems and to exert effective influence on countries of origin to address the root causes leading to refugee outflows. The international community should also help first asylum countries to find durable solutions to the refugee problem. The destinations chosen by refugees was a function of the differences in the treatment mentioned above: when one country took a stringent approach towards those seeking refuge, refugees tended to seek access to other countries with a more lenient approach.

10. His previous reports dealt with the vulnerability of various groups, such as persons with disabilities, and women and children who were not part of the elite in the country of origin, and therefore bore the brunt of discrimination.

11. He stressed the importance of the responsibility of the State authorities for egregious human rights violations. The scenario had been made even more volatile by the various missile and nuclear tests, as previously mentioned, which led the Security Council to impose sanctions against the Democratic People's Republic of Korea. He further noted that in the preamble to resolution 1718 (2006), the Security Council made implicit reference to the issue of human rights by its emphasis on "other security and humanitarian concerns of the international community".

12. He invited the Democratic People's Republic of Korea: (1) To abide by its international obligations under the various human rights treaties to which it was

a party, as well as international law, and shift military expenditure to the human development sector and reallocate national resources to protect human rights and promote human security; (2) To facilitate access to humanitarian aid, respect the need for monitoring and build food security for the population; (3) To reform its prison system and build the judiciary in order to establish greater respect for fundamental freedoms, eliminate violence against the human person, and cooperate with the resolution of cases of abduction and disappearance; (4) To respect the freedom of movement of its citizens and to amend its legislation accordingly; (5) To allow the Special Rapporteur to enter the country to assess the human rights situation and advise on needed improvements.

13. He also invited the international community to establish dialogue with the Democratic People's Republic of Korea with relevant incentives, graduated influence and economic and security guarantees, and to mobilize all United Nations bodies to promote and protect human rights throughout the country.

14. **Mr. Pak** Tok Hun (Democratic People's Republic of Korea) said that his delegation objected to the resolution establishing the mandate of the Special Rapporteur, which had been adopted under pressure from the United States and the European Union, and was based on lies that supported hostility towards his Government. The issue of human rights concerned not only the promotion and protection of the rights and freedoms of persons, but also the protection of the dignity and sovereignty of States. The Democratic People's Republic of Korea would continue to defend socialism and its freedom.

15. In addressing the role of the international community, he believed that attempting to disgrace a country was not a very constructive way of dealing with the issue of human rights. His Government had formerly cooperated with the international community in the area of human rights, for example, by authorizing representatives of the European Union and Amnesty International to visit prisons and to meet members of the judiciary, and by its consideration of adherence to various international instruments such as the Convention against Torture. However, those efforts had ended since the adoption of resolutions against his country.

16. **Ms. Tavares** (Portugal), speaking on behalf of the European Union, urged the Democratic People's Republic of Korea to cooperate fully with the Special Rapporteur, including by granting him access to the country. She asked the Special Rapporteur how, in his opinion, he expected the human rights situation to improve, given the progress made in the six-party talks and whether he believed that such progress might include future cooperation with his mandate. She also asked whether the treatment of refugees in third countries, or by the Democratic People's Republic of Korea itself in the case of persons who were forcibly returned, might be improved, and what role the United Nations High Commissioner for Refugees (UNHCR) might play in that regard.

17. Similarly, she asked what role technical assistance provided by the Office of the United Nations High Commissioner for Human Rights could play in preventing torture and in reforming the prison system in order to promote greater respect for fundamental freedoms in the Democratic People's Republic of Korea. She asked which other groups were regarded as particularly vulnerable and what particular measures had been envisaged for their protection.

18. **Mr. Reese** (United States of America), noting the lack of cooperation of the Democratic People's Republic of Korea authorities with the Special Rapporteur, welcomed the progress achieved in the first half of 2007 within the framework of the six-party talks. He sought further clarification on the variety of detention centres in the Democratic People's Republic of Korea and on the definition of political dissidents as used in the report of the Special Rapporteur. In addition, it would be useful if the Special Rapporteur could provide an estimate of the ratio of political dissidents to ordinary prisoners in those centres and share his views on how to prevent and combat the exploitation of refugees from the Democratic People's Republic of Korea by smugglers and other intermediaries.

19. United States officials had repeatedly stated that improvements in the human rights record of the Democratic People's Republic of Korea would be necessary for that country to join the international community and normalize relations with the United States. His Government would continue to explore and identify firm measures for addressing those problems, including through international organizations and bilateral partnerships.

20. **Mr. Oshima** (Japan) welcomed the objectivity of the work of the Special Rapporteur and said that his

delegation fully endorsed his recommendations, particularly those that invited the Democratic People's Republic of Korea to honour its obligations with respect to the various international human rights instruments and to address the root causes of refugee outflows. In addition, the country should open its borders to the Special Rapporteur, for whom Japan wished to reaffirm its support. He recalled that abductions and enforced disappearances were flagrant violations of human rights. Only 5 of the 17 cases of abduction and enforced disappearances officially recognized by Japan had been resolved. He therefore appealed to the Democratic People's Republic of Korea to adopt the necessary measures for the 12 remaining cases to be resolved. In conclusion, he asked the Special Rapporteur to clarify what firm measures the international community and the United Nations could adopt in order to promote and protect human rights in the Democratic People's Republic of Korea and what progress had been achieved in the human rights situation since the latest round of six-party talks.

21. **Ms. Stuewer** (Canada), regretting that the Special Rapporteur had still not been given access to the Democratic People's Republic of Korea, urged the Government to change its position and to also allow the Special Rapporteur on the freedom of religion or belief, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Rapporteur on the right to food to visit the country. She encouraged the Democratic People's Republic of Korea to address the root causes of the flight of refugees and to put an end to the persecution of those who were returned by receiving States. She further asked the Special Rapporteur to indicate how the international community could contribute to the improvement of the human rights situation in the Democratic People's Republic of Korea.

22. **Ms. Park** Enna (Republic of Korea) said that she agreed with the Special Rapporteur that the signing of the Agreement on Second-Phase Actions for the Implementation of the September 2005 Joint Statement would have a beneficial influence on the human rights situation in the Democratic People's Republic of Korea. She also concurred with him that the inter-Korean summit meeting would have a positive impact on that situation and would enhance the chances for peace and prosperity in the peninsula and throughout the region.

23. With regard to food security in the country, she said that the ongoing food shortage was a pressing problem necessitating the continued supply of humanitarian aid. She asked the Special Rapporteur to clarify the definition of "refugees *sur place*" and the rationale behind the principle of non-refoulement and to explain what kind of cooperation could reasonably be contemplated with a view to assisting refugees. She also requested him to outline what measures of cooperation between the international community and the Democratic People's Republic of Korea were most needed and easiest to apply in order to improve the quality of life of the country's population.

24. **Mr. Muntarbhorn** (Special Rapporteur on the situation of human rights in the Democratic People's Republic of Korea), replying first to the questions put by the representative of Portugal, said that United Nations assistance with flood relief measures was a good example of cooperation with the Democratic People's Republic of Korea and that the six-party talks offered a variety of opportunities to improve the human rights situation in the country, especially through bilateral channels. The number of refugees had risen in South-East Asia, perhaps partly because of the attitude of host countries. In that connection, he called on the countries concerned to grant the Office of the United Nations High Commissioner for Refugees (UNHCR) access to all refugees, wherever they were. As for the rule of law and prison conditions, he invited the Democratic People's Republic of Korea to accept the offer of technical assistance from the Office of the United Nations High Commissioner for Human Rights (OHCHR). Lastly, discrimination against women and children who did not belong to the elite was causing many people who were bereft of means of sustenance to leave the country.

25. In response to the questions raised by the representative of the United States, he said that many people were being held in detention and major prison reforms were necessary. The Democratic People's Republic of Korea did have laws to combat people smuggling, but they were implemented only in part. The issue was closely related to criminal elements operating in the border area. It would therefore be wise for neighbouring countries to ratify the Protocol to prevent, suppress and punish trafficking in persons, especially women and children, supplementing the United Nations Convention against Transnational Organized Crime.

26. With regard to the question of the representative of Japan concerning the advisability of using the totality of the United Nations system to solve human rights problems in the Democratic People's Republic of Korea, he said that United Nations entities should mainstream human rights into their work and were about to adopt measures on key issues in that respect. The six-party talks were indicative of a more auspicious period, since they opened up further possibilities for multilateral and bilateral collaboration and cooperation. As far as the matter of abductions was concerned, in 2002, Japan and the Democratic People's Republic of Korea had signed the Pyongyang Declaration in which they undertook to settle their disputes amicably and to take steps to normalize their relations once the outstanding issues had been settled.

27. As for policy options for the future, the concern of the representative of Canada, he said that they remained those currently on offer, namely multilateral cooperation, six-party talks and bilateral relations.

28. Turning to the questions and comments of the representative of the Republic of Korea, he welcomed the convening of the inter-Korean summit meeting and, in particular, the joint Declaration. The food situation in the Democratic People's Republic of Korea should be solved not only by means of food aid, but also through food security measures to prevent the partial loss of crops before and after the harvest and to conserve the environment through good watershed and land management, with due participation of the population in the planning of agricultural activities.

29. Refugees were deemed to be people who had fled from their country of origin for fear of persecution. Persons who left their home country because they were hungry were not considered to be refugees within the meaning of the 1951 Convention relating to the Status of Refugees or the 1966 Protocol thereto, but they could be regarded as such if they feared persecution on returning to their country. That was precisely the situation of hunger refugees from the Democratic People's Republic of Korea, who left without a visa and who were likely to be punished on going back. With regard to regional cooperation, he had already voiced his sympathy with first-asylum countries, which were often neighbouring countries whose concerns about the massive influx of refugees were understandable. At the international level, it was therefore vital to establish a climate of trust and to help those countries to assist refugees, to provide them with temporary protection and, possibly, to resettle them. As for the quality of life in the Democratic People's Republic of Korea, the challenge was to address freedom from want and fear. His report contained various recommendations to that end. He therefore urged representatives to examine them in depth and to support any ensuing programmes implemented with the cooperation of the Democratic People's Republic of Korea.

Report of the Independent expert on the situation of human rights in Burundi: Presentation and dialogue (A/62/213)

30. **Mr. Okola** (Independent expert on the situation of human rights in Burundi), introducing his interim report (A/62/213), said that during his mission, he had focused on one important issue: solidarity with the people of Burundi in pursuit of their economic and social rights. To that end, he had timed his visit to coincide with the round-table donors conference on the Government's implementation of the Poverty Reduction Strategy. He had wanted to be present on that occasion so that he could lobby donors to provide the people of Burundi with the assistance they needed in order to benefit from the dividends of peace. He had also wanted to register his conviction that while civil and political rights were important, they should not be emphasized at the expense of economic and social rights. Donors had pledged US$ 650 million to Burundi at the round table.

31. Tensions within the ruling party, the Conseil national de défense de la démocratie-Force de défense de la démocratie (CNDD-FDD), had escalated in early 2007 because of the party leadership's involvement in the management of Government affairs. That situation had had a negative impact on the human rights situation and had polarized Burundian society to a degree that could have threatened the peace process and the stability of national institutions. Later, during his visit, concerns had been raised regarding the general tendency towards corruption, and at times scandals had implicated high-ranking officials of the Government and the ruling party. The Government had set up an anti-corruption court, but further action was needed.

32. Despite the persistence of serious violations, the overall human rights situation seemed to have improved. Relations between the State and civil society were quite a bit better and the media were able to

report on a wide range of matters without Government interference. There were few cases of human rights violations by military personnel; most of those registered concerned ill-treatment, and sometimes torture, of suspects by the police and violations of legal procedure by the police and the judiciary.

33. Arbitrary arrests had increased during the reporting period and had included cases of prolonged stay in police custody, detention in illegal places and lengthy pre-trial detention.

34. In his previous report, he had drawn attention to the massacre of over 30 civil detainees by military authorities in the province of Muyinga. The Government had established four commissions to investigate the matter but, to date, none of the reports compiled by those bodies had been made public; that suggested that the Government was not interested in disclosing their contents and wanted to shield the high-ranking public figures that they implicated. It was therefore incumbent on the people of Burundi and the international community to bring pressure to bear on the Government so that all those involved in the massacre would be brought to justice and the culture of impunity that was so deeply ingrained in the politics of Burundi would be eradicated.

35. With respect to sexual violence, over 300 cases of rape had been reported during the first five months of 2007. Despite the awareness campaigns organized by the Government, some of the victims remained silent and some of the administrative authorities and community elders continued to recommend out-of-court settlements.

36. The situation of food security had worsened during the first five months of 2007 as a result of heavy rains that had destroyed crops and houses in many parts of the country, which clearly required international humanitarian assistance until it recovered from cyclical famine.

37. Implementation of the Ceasefire Agreement between the Government, the Forces nationales pour la libération (FNL-Palipehutu) and its armed wing had not yet been implemented at the time of his visit. The Government and the FNL were deadlocked on the issues of power-sharing and demobilization; that situation, in turn, had had an impact on security in the country. During the past month, the FNL had allegedly killed 33 people in Bujumbura Rural, a fact that underscored the urgent need to implement the Ceasefire Agreement.

38. During his visit, he had drawn the authorities' attention to the issue of delays in implementation of the planned transitional justice mechanisms. They had informed him that the Government and the High Commissioner for Human Rights had reached consensus on national consultations and that the President of Burundi had confirmed to the High Commissioner that there would be no amnesty for war crimes, crimes against humanity and crimes of genocide committed during the conflict. However, the question of the relationship between the truth and reconciliation commission and the special tribunal had yet to be resolved; the Government's position was that the special tribunal's investigations should be based on referrals from the commission, while the United Nations was of the view that the tribunal should be independent of the commission in conducting its investigations.

39. For several reasons (lack of equipment, poor training, interference by politicians and corruption), the justice system in Burundi was still weak. Consequently, the population had lost faith in that system and was resorting to mob justice. Furthermore, the Government had made little progress in bringing to justice civilians and law enforcement officials who were involved in illegal activities; for example, the alleged perpetrators of the Muyinga massacre had yet to be arrested or charged.

40. In conclusion, he appealed to the Government to speed up the establishment of the truth and reconciliation commission and the special tribunal and called on the international community to support efforts to reform the justice system and provide humanitarian and development assistance. He urged the Government to release the reports on its investigation into the Muyinga massacre and bring all those involved to justice, and the Burundian authorities to investigate cases of sexual violence and bring those responsible to justice. He also urged the Government and the FLN-Palipehutu to implement the Ceasefire Agreement. Lastly, he encouraged donors to release the funds pledged at the Paris, Geneva and Brussels conferences and called on the international community to support the reform of the justice system and, in particular, the establishment of transitional justice mechanisms such as the truth and reconciliation commission and the special tribunal.

41. **Mr. Ntakirutimana** (Burundi) said that if the Peacebuilding Commission was focusing on Burundi, it was because his country needed special attention. After gaining independence, it had faced several difficult years of conflict, during which human rights had been openly flouted. The current leaders, who were still young, were survivors of that dark period in the nation's history. The Government realized that despite the considerable achievements of the past two years, much remained to be done in the field of human rights. It was determined to take action to improve that situation, including by combating corruption, but it needed help in order to make economic progress, create jobs and feed its people, who were hungry.

42. **Ms. Tavares** (Portugal), speaking on behalf of the European Union, said that in light of past experience, she viewed the role of transitional justice arrangements as crucial to future stability and reconciliation. She therefore requested further information on the mandate of the steering committee and on the implications of its work for the truth and reconciliation commission and the special tribunal. She also asked what the timetable for the steering committee's work was and what would happen once it had completed that work. She wondered how the international community could encourage the Government to take action in order to ensure that justice was done in the cases of the massacres in Gatumba and Muyinga.

43. While she welcomed the Government's efforts to improve the administration of justice in the country and the work of the United Nations Integrated Office in Burundi (BINUB)/United Nations country team, there were serious problems with Burundi's justice system (including lack of due process, arbitrary detentions, mistreatment of detainees, corruption and political influence). She asked the Independent Expert how far the review of the Code of Criminal Procedure had proceeded thus far and what action the international community should take to support further reform of the justice system. In light of the increased levels of sexual violence and the impunity enjoyed by those responsible, she also wondered whether the existing laws were adequate to deal with cases of sexual violence and whether further amendments were needed. She asked what other measures had been taken to prevent and put an end to such violence and how the problem of unwillingness to name the perpetrators could be addressed.

44. **Mr. Cabral** (Guinea-Bissau) said that the situation in Burundi could not be properly understood without taking into account all that had been achieved by the Burundian authorities. Fundamental rights were not limited to civil and political rights but also included the right to decent housing, food, work and health. He again proposed that independent experts should stay longer and more often in the countries concerned so as to be able to form a good idea of the situation and report usefully on it to the General Assembly. It was also necessary to help the Burundian authorities to stabilize the country, build peace, promote reconciliation and improve living conditions, particularly in terms of jobs, health and housing. He hoped that the independent expert would collaborate with the Peacebuilding Commission, which had done excellent work for Burundi.

45. **Ms. Mwaipopo** (United Republic of Tanzania) asked the independent expert about the past and future role of regional entities, such as the African Union and the International Conference on the Great Lakes Region, in the peace process in Burundi.

46. **Mr. Hagen** (United States of America) stressed the importance of collecting data on human rights violations when seeking to identify their perpetrators and reform institutions. He asked the independent expert to explain the assertion in paragraph 19 of the report that few human rights violations had been committed by military personnel, since it was stated in paragraphs 22 and 35 that military forces had been involved in killings and the use of forced labour, while the United States report on human rights in Burundi spoke of a number of acts of violence committed by the army.

47. **Mr. Belinga-Eboutou** (Cameroon), endorsing the remarks and the proposal made by the representative of Guinea-Bissau, said that the representative of Burundi had clearly described the situation in his country and what the international community must do to help it. Burundi had come a long way, and the current generation, made up of survivors from a period when everyone's rights had constantly been flouted, was endeavouring to promote fundamental rights. The international community should therefore examine the situation without any bias and, at the same time, increase its assistance to the country, which was essential for it not only to rebuild but also to restore civil peace.

48. **Mr. Okola** (Independent expert on the situation in Burundi) agreed that the situation in Burundi should be studied in the light of how far the country had come in the space of a few years. In 2005, against all expectations, Burundi had managed to hold elections, form a government and meet the obligations set out in the Arusha Peace and Reconciliation Agreement. The ethnic composition of the country and the importance of the role of women in society had been duly taken into account when the Government and institutions had been put in place. Several issues that had given cause for much concern two years earlier, like the integration of the army and the police force, political prisoners, demobilization and the recruitment of child soldiers, no longer required attention. Burundi had made huge progress in a short period and was now enjoying relative peace, thanks to the efforts made by its Government.

49. The Government was indeed determined to improve the situation, as was demonstrated by the continuing training of military personnel and members of the public security services and action to develop awareness of human rights, conducted in collaboration with the United Nations Integrated Office in Burundi. In response to the question put by the representative of the United States, he said that over the past two years, there had been a drop in the number of human rights violations and that, far from minimizing the problems relating to the conduct of the military forces, police and other organs of the State, he had wished to show that they were committing fewer acts of violence than previously.

50. Going on to address the questions raised by the representative of Portugal concerning the steering committee, he said that it had not yet been set up and hence did not for the time being have a mandate or a timetable. It would be mainly required to work for the reconciliation of Burundian society, but it was still not known whether it would continue to exist once the truth and reconciliation commission had been put in place. As for the investigations into the Muyinga and Gatumba massacres, there was no progress to report. It was however crucial that the Government of Burundi and the international community shed every possible light on those events.

51. With regard to the judicial system, the Penal Code was still being reviewed. As for the reform of the law on sexual offences, the President of Burundi had stated that the perpetrators would not benefit from any clemency.

52. He agreed with the representative of Guinea-Bissau that civil and political rights must not take precedence over other rights and that access to food and housing was just as important as political freedom. As for the international community's pledges of support for reconstruction, they were welcome, but they now had to be translated into reality.

53. **The Chairman**, speaking in his capacity as representative of Jamaica and member of the Peacebuilding Commission, commended the Government of Burundi for all its efforts to bolster peace and democracy and joined previous speakers in stressing that all fundamental rights should be given equal importance.

Report of the independent expert on the situation of human rights in the Democratic Republic of the Congo (A/62/313)

54. **Mr. Pacéré** (Independent expert on the situation of human rights in the Democratic Republic of the Congo), introducing his report (A/62/313), said that, notwithstanding the determination of the President elected in 2006 and the new Government to ensure respect for human rights and combat impunity, serious human rights violations continued to be perpetrated throughout the territory of the Democratic Republic of the Congo, especially by members of the armed forces and the police, and to remain unpunished. Such had been the situation noted by the Special Rapporteurs on the independence of judges and lawyers and on violence against women during their official visits to the country, in April and July 2007 respectively. There had been outbursts of violence in Bas-Congo and Kinshasa in the wake of the elections, accompanied by wholesale violations of human rights, whose perpetrators had still not been brought to justice.

55. In 2007, the situation had also deteriorated in the eastern part of the country. In North Kivu, the Bravo mixed brigade had massacred at least 15 persons in Buramba. Following the "mixage" process launched by the Government at the beginning of the year, a large number of officers loyal to the renegade general Laurent Nkunda, who were responsible for serious human rights violations, had been simply reincorporated into the army. As a result, there had been armed confrontations between the Forces démocratiques de

libération du Rwanda and the mixed brigades loyal to General Nkunda, which had exacerbated ethnic tension, created greater insecurity, triggered mass displacements of the population and led to an increase in the number of ethnically or politically motivated human rights violations. The situation was especially serious in that both sides were targeting the civilian population and were largely preventing humanitarian organizations from going into the most affected areas. Much of South Kivu was under the control of armed groups of Rwandan Hutu, who attacked civilians. In May, some 40 persons, mainly women and children, had been reported to have been wounded or hacked to death and at least seven women had been abducted by members of the Kanyola militia, in retaliation against the armed forces of the Democratic Republic of the Congo.

56. Sexual violence continued to be widespread, most notably in North Kivu and South Kivu and in Equateur province. Very few of the presumed offenders had been brought to justice. According to statistics compiled by the integrated United Nations Human Rights Office in South Kivu, between 2005 and 2007, 287 cases of rape had been referred to the civilian and military courts, while in 2005, the health services had recorded around 14,200 new cases of sexual violence, which meant that less than 1 per cent of cases had been brought to justice. In 43 cases, 80 per cent of the persons charged had been released on remand and had never again appeared before a court, and more than 80 per cent of cases had been pending for two years. In most of the cases, the victims were poor women unable to pay the legal costs demanded before enforcement of judgement.

57. The prison situation was precarious and of serious concern, because of overcrowding, poor sanitary conditions, lack of food and inadequate medical care. There was also an urgent need to address the increasing number of cases of pre-trial detention.

58. Impunity, which was largely a result of interference by political and military actors in the administration of justice, remained a major source of concern. Most serious human rights violations had not been prosecuted or even investigated. None of the serious crimes committed during the wars of 1996 and 2002 had been thoroughly investigated and many suspected war criminals continued to be appointed and promoted within the national army. The judicial system had limited resources and there were far too few judges and courts. During her visit to the Democratic Republic of the Congo in May 2007, the United Nations High Commissioner for Human Rights had spoken about human rights violations and impunity with President Kabila and other officials. She had recalled that under no circumstances should the Democratic Republic of the Congo grant amnesties to those who committed serious violations of fundamental rights and had requested the establishment of competitive recruitment for members of the defence and security forces so that those who perpetrated atrocities could not join their ranks. She had also obtained support from the Government for a credible and unprecedented map to be drawn up of the most serious violations of human rights and international humanitarian law committed between 1993 and 2003 and for an evaluation of the capacities of the Congolese judicial system, which would provide assistance in the development of a transitional justice strategy and in the establishment of appropriate mechanisms.

59. The independent expert recommended that the authorities should show zero tolerance for the perpetrators of human rights violations; put an end to political and military interference in the administration of justice; provide the judicial system with the resources and the budget required to guarantee its effectiveness and its independence; ensure that no amnesties were granted to those who committed war crimes, crimes against humanity and acts of genocide; adopt the law implementing the Rome Statute; duly support the team responsible for drawing up the map of human rights violations; initiate a process for the competitive recruitment of members of the defence and security forces; and establish a national human rights commission which conformed to international standards. The authorities would also need to take urgent measures to address the deterioration of the situation in the east of the country. In North Kivu, the integrated brigades should go through the system of brassage and serious incidents should give rise to judicial proceedings. In South Kivu, it was crucial to expedite the disarmament of armed groups of Rwandan Hutus and to punish those who committed serious crimes against civilians. It was also essential for independent and impartial investigations to be carried out into the incidents in Bas-Congo and Kinshasa, and for the persons involved in them to be tried. To that end, the security services must be punished when they committed serious human rights violations and their mandate must be brought into line with international standards. Finally, it was necessary to establish a special international tribunal or, failing that, joint

criminal chambers, to prosecute the crimes committed before 1 July 2002 and those committed since that date.

60. **Mr. Mukongo Ngay** (Democratic Republic of the Congo) said that the report of the independent expert had been prepared in the same way as the report of the previous year. However, the present report limited itself to setting out the facts without placing them in the current socio-political and economic context. The independent expert had also failed to mention the rebirth of the Democratic Republic of the Congo as a State based on law and its return to international affairs as a credible actor and partner. Indeed, after long years of crisis, the Democratic Republic of the Congo had managed to hold free and democratic elections, to pacify and reunify the territory, to establish legitimate institutions and to restore growth. It was prioritizing reconstruction and development view the aim of rolling back poverty, injustice and social inequalities. It was in that context that his country was attached to promoting the rule of law, which it badly needed to eradicate such scourges as the sexual exploitation of women and children, to cite but one example. It should be noted, however, that no State on its own could address the many challenges that the restoration of a justice system and compliance with the rule of law entailed in a post-conflict society. The Democratic Republic of the Congo was therefore committed to international justice, particularly the International Criminal Court. Nevertheless, the belief of the Congolese Government in international justice had not made it lose sight of the virtues of national justice, which alone was capable of tackling problems that had emerged during the war, including the use of rape as a weapon of war, organized crime, money-laundering, illicit trafficking in weapons and the illegal exploitation of natural resources and other forms of wealth.

61. In that respect, the Democratic Republic of the Congo was aware of the dilapidated state to which its judicial and prison systems had been reduced and it needed immediate and practical assistance in order to remedy that situation. It was on the basis of that imperative that his country would in future review the relevance both of the independent expert's mandate and of the resolutions on the human rights situation on its territory. Owing to the existence of the Human Rights Council, the Democratic Republic of the Congo would support the revision, even the withdrawal, of the independent expert's mandate and the establishment of a universal periodic review. However, in the meantime it would support the independent expert's recommendations, including those concerning the establishment of a special international criminal tribunal or joint criminal chambers, and it hoped that those recommendations would be followed by action.

62. **Mr. Nsengimana** (Rwanda) said that while the independent expert's report properly reflected the tragedy of the civilian population in certain areas of North and South Kivu, it ought to have been more in-depth and more coherent. It would have been particularly desirable for the report to dwell on the root causes of the situation in those areas of the Democratic Republic of the Congo, especially the presence and total freedom to act with impunity of the Forces démocratiques de libération du Rwanda (FDLR) and the Interahamwe militias. The report should also have made recommendations concerning those entities, if only to reflect paragraphs 23, 26, 34 and 51 to 58 of the report, which described some of the crimes and atrocities committed by FDLR and the militias in question.

63. **Mr. Cabral** (Guinea-Bissau) said that he regretted the purely descriptive nature of the report, which should have been more analytical. The report revealed inculpatory material against the Government of the Democratic Republic of the Congo but failed to present exculpatory material. In particular with regard to the conditions of detention in prisons, the independent expert's report made no reference to the United Nations Organization Mission in the Democratic Republic of the Congo (MONUC), which had a considerable budget and a large number of staff. He therefore wished to know whether the independent expert had been given an opportunity to work with MONUC and to propose solutions to it regarding conditions of detention.

64. **Ms. Stuewer** (Canada) recalled that the Democratic Republic of the Congo had recently ratified the Pact on Security, Stability and Development in the Great Lakes Region, which included protocols on mutual legal assistance and on the prevention and suppression of sexual violence against women and children. She asked the independent expert whether he believed that regional and international support provided to implement the Pact and its protocols could improve the human rights situation in the Democratic Republic of the Congo and, if so, in what way.

65. **Mr. Hagen** (United States of America) said that he shared the independent expert's concerns regarding the state of human rights in the Democratic Republic of the Congo. He welcomed the fact that the Congolese Government had recognized the problems that it faced in that area, as demonstrated by its cooperation with the independent expert. However, it was clear that much more proactive measures must be taken to put an end to the killings, forced disappearances, acts of torture and arbitrary arrests and detentions. While the report was highly useful in its recommendations and in many other respects, it would have benefited from a closer examination of problems related to labour rights violations, particularly various types of forced labour, trafficking in persons and the recruitment of child soldiers. With regard to the latter, although the report briefly mentioned the need for the Congolese Government to combat the use of children by Government forces, armed groups and militia, it might also have reported more substantively on the unlawful recruitment of child soldiers, including children from Rwandan refugee camps.

66. **Ms. Tavares** (Portugal), speaking on behalf of the European Union, expressed the European Union's increasing concern at the persistence of violence in North Kivu province and sought the independent expert's views on the violence and its impact on the human rights and humanitarian situation in the province.

67. She wondered whether he had learned of any further developments concerning the widespread sexual violence in the conflict-affected eastern and other areas of the country since the submission of his report, including with respect to any measures taken by the Government to combat impunity. She asked to what extent sexual violence was underreported in the Democratic Republic of the Congo. It would also be interesting to know whether he had shared his assessment of that issue with the Special Rapporteur on violence against women, its causes and consequences following her visit to the Democratic Republic of the Congo.

68. She wondered whether the independent expert had discussed the recommendation on the establishment of a special international criminal tribunal or joint criminal chambers with the Congolese Government. Noting that at the most recent session of the Human Rights Council he had supported the mapping exercise of human rights violations launched by the High Commissioner for Human Rights, she sought his views on the complementarity between that initiative and his recommendations, especially with regard to their respective timing. He should provide further details on his planned visits to the Democratic Republic of the Congo in the coming months.

69. **Mr. Ntakirutimana** (Burundi), noting that the Democratic Republic of the Congo had gone through a difficult period where the law of the jungle had been the order of the day in many areas, said that the country's authorities should be encouraged to achieve their goal of peace and development. He found the report too bleak and negative; it should have at least mentioned the recent successful elections. Turning to the region, he welcomed the progress achieved by the Tripartite Commission Plus One and the Economic Community of the Great Lakes Countries in their efforts to promote the development of those countries and provide security for their people.

70. **Mr. Pacéré** (Independent expert on the situation of human rights in the Democratic Republic of the Congo), responding to the questions raised, said that given the size of the country and the magnitude and severity of its problems, it was better, for the reports to be of any use, to focus them on specific areas at a time. He had accordingly focused the current report on crimes committed by the security forces, sexual violence and the prisons situation; that did not mean that there were no problems in other areas of human rights, nor that no efforts and progress had been made in those areas.

71. While he had briefly referred to the elections at the beginning of his report, he could not expand on the matter because of the approach he had decided to adopt and the need to comply with some rules, including with respect to the number of pages per report and the length of visits.

72. In response to the European Union representative's questions with regard to the establishment of an international criminal tribunal or joint criminal chambers, he noted that with crimes being rampant, impunity was at an all time high yet, because of a lack of resources, the courts were unable to deal with the situation. The international community's assistance was therefore absolutely necessary and that was why he had recommended the establishment of an international criminal tribunal for the country or, failing that, joint criminal chambers within existing

Congolese courts, signalling a need for conducting a mapping exercise on human rights violations. The decision by the United Nations High Commissioner for Human Rights to launch the mapping exercise was intended to address that situation and was consistent with the Security Council resolution that called upon the High Commissioner to assist the Congolese Government to put an end to impunity.

73. With regard to the planned visits to the Democratic Republic of the Congo, the Bureau of the Human Rights Council had established a schedule in consultation with the Government and he intended to travel to that country on 28 November 2007 and expected to be able to return there in January or February 2008.

74. Sexual violence raised the same concerns as other human rights violations and, like those other violations, could only be stamped out when security and the system of justice were restored. The Government authorities had informed him during a meeting that every effort was made to put an end to such violations but that it was obvious that the means for achieving that goal were sorely lacking.

75. In response to the questions concerning statistics on human rights violations, he said that he was in constant touch with MONUC and the relevant bodies in order to collect information. He received 200 to 250 pages of e-mail a day on human rights violations but it was difficult to take the necessary action on all of them; it was an area where time was of the essence and he was doing the best that he could.

76. He had dealt with child soldiers at length in his 2006 report and, given the afore-mentioned constraints, had excluded the topic from his current report.

77. Reacting to the comments of the representative of Burundi, he said that there would be no peace in the Democratic Republic of the Congo unless the neighbouring States combined their efforts to assist that country's Government, which implied that they were aware of what they needed to do to ensure their own security and were also aware of the interests of neighbouring States.

78. As to the Guinea-Bissau representative's concern that MONUC was not contributing to addressing the prisons situation in the Democratic Republic of the Congo, he said that although the prisons were within the purview of the justice system and the Government, the international community could also provide assistance. In any case, because of financial regulations, MONUC funds could not be used to improve the prisons situation.

79. Lastly, referring to the comments of the representative of Rwanda, he said that he was fully aware of the disastrous situation in the eastern part of the Democratic Republic of the Congo; his analyses took into account the fact that that situation had to be understood in the light of the events that occurred in Rwanda in 1994.

The meeting rose at 6.10 p.m.